IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2004

CORAM

THE HON'BLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.20464 of 2002
and
WPMP.No.59757 of 2002

M.Sivabalan .. Petitioner

-Vs-

1. State of Tamil Nadu,
rep, by its Secretary,
Department of School
Education,
Fort St. George,
Chennai-9.

2. The Director of School Education,
DPI Compound, College Road,
Nungambakkam, Chennai-6.

3. The Chief Educational Officer,
Tallakulam,
Madurai-625002.

4. The District Educational Officer,
Tallakulam, Madurai-625002.

5. Madurai Nadar Uravinmurai's Jayaraj
Nadar Higher Secondary School,
rep. by its Secretary,
Nagamalai, Madurai-625019.

6. A.Thangapandi

..6th respondent impleaded as per
order of this Court dt.11.8.2003
in WPMP.No.21607/2003. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
for the issuance of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K.Chandru, Sr.Counsel
for Mr.M.Ramamoorthi

For Respondents : Mr.V.R.Rajasekaran,
Spl. Govt. Pleader-R1 to 4
Mr.A.Abdul Rahman R6
No appearance -R5.

:O R D E R

Aggrieved by the proceedings of the Director of School Education, the second respondent herein dated 20.4.2002, resuming the post of Physical Director Grade-I, sanctioned to the fifth respondent-Higher Secondary School by the first respondent by G.O.No.4D No.1 School Education Department, dated 21.1.2000, and the consequential proceedings of the fourth respondent dated 30.5.2002, refusing approval to the appointment of the petitioner as Physical Director Grade-I in the fifth respondent-School, due to the withdrawal of sanction of the said post, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the second respondent in connection with the impugned proceedings of the second respondent in Na.Ka.No.2431/W7/97 dated 20.4.2002 in so far as withdrawing the post of Physical Director Grade-I in the fifth respondent school and the consequential impugned order of the fourth respondent in Mu.Mu.No.3856/Aa1/2002 dated 30.5.2002 refusing the approval to the appointment of the petitioner to the post of Physical Director Grade-I in the fifth respondent school, quash the same and consequently to direct respondents 1 to 4 to approve the appointment of the petitioner as Physical Director Grade-I in the fifth respondent school.

2.1. Concededly, the first respondent-Government by G.O.(4D)No.1, School Education Department, dated 21.1.2000, upgraded the post of Physical Director Grade-II to Physical Director Grade-I and accorded sanction to the post of Physical Director Grade-I in the fifth respondent school from the academic year 2000-2001, referring the name of the incumbent viz., V.Sokkalal, who was holding the post of Physical Director Grade II in the fifth respondent school at the relevant point of time.

2.2. Even though the said V.Sokkalal had to retire on 30.9.1999 on superannuation, he was permitted to continue till 31.5.2000, the end of the academic year, on reemployment, in the fifth respondent school. Consequently, the fifth respondent school requested the Professional and Executive Employment Office, Mandaiveli, Chennai-4, for a list of the eligible candidates to fill up the post of Physical Director Grade-I in the fifth respondent school, sanctioned by G.O.(4D) No.1, School Education Department dated 21.1.2000, which was communicated by the proceedings of the second respondent dated 21.3.2000.

2.3. Pursuant to the request of the fifth respondent school, the Professional and Executive Employment Office, Chennai-4, by their proceedings dated 21.5.2001, forwarded a list of 20 eligible candidates, including the name of the petitioner herein, for filling up the post of Physical Director Grade-I in the fifth respondent school and accordingly, the petitioner was selected and appointed as Physical Director Grade-I in the fifth respondent school with effect from 27.6.2001 by a resolution of the school committee of

the fifth respondent dated 26 .6.2001.

2.4. Since the proceedings of the second respondent dated 21.3.2000, upgrading the post of Physical Director Grade-II to Physical Director Grade-I, refers to the name of the said V.Sokkalal, who was holding the post of Physical Director Grade-II in the fifth respondent school on 21.3.2000 and was eligible for the said upgradation, but retired, thereafter, on 31.5.2000, the fifth respondent school by representation dated 3.8.2001, requested respondents 2 to 4 to confirm the sanction of upgradation of the post of Physical Director Grade-II to Physical Director Grade-I, accorded by the first respondent in G.O.(4D) No.1, School Education Department, dated 21.1.2000.

2.5. On receipt of the said representation of the fifth respondentschool dated 3.8.2001, the third respondent by proceedings dated 20.8.2001 forwarded the said request of the fifth respondent dated 3.8.200 1 to the second respondent. As orders were awaited on the request of the fifth respondent dated 3.8.2001, the fifth respondent made a further representation dated 28.12.2001 seeking permission to fill up the post of Physical Director Grade-I, which was sanctioned with effect from 1.5.2000. The third respondent again by proceedings dated 7.1.2002 forwarded the request of the fifth respondent dated 28.12.2001 to the second respondent seeking appropriate orders to permit the fifth respondent to fill up the post of Physical Director Grade-I. However, the third respondent by proceedings dated 25.2.2002 communicated the proceedings of the second respondent dated 6.12.2001, permitting the fifth respondent to utilise the post of Physical Director Grade-I from the academic year 2001-2002.

2.6. But, within two months thereafter, the second respondent in his proceedings dated 20.4.2002 resumed the post of Physical Director Grade-I, which was sanctioned to the fifth respondent school by G.O.(4 D)No.1, School Education Department, dated 21.1.2000 and also confirmed in the earlier proceedings of the second respondent dated 6.12.2001 and that of the third respondent dated 25.2.2002.

2.7. Consequent to the proceedings of the second respondent dated 20 .4.2002, resuming the post of Physical Director Grade-I in the fifth respondent school, the fourth respondent refused to approve the appointment of the petitioner as Physical Director Grade-I in the fifth respondent school with effect from 27.6.2001. Hence, the above writ petition.

3.1. According to Mr.K.Chandru, learned Senior Counsel for the petitioner, the upgradation of the post of Physical Director Grade-II to Physical Director Grade-I in the fifth respondent school is purely based on the student-staff strength ratio, after having satisfied with the need of such upgradation, but not with reference to the said incumbent, who was holding the post of Physical Director Grade II on the date of upgradation of the Physical Director Grade II to Physical Director Grade I by G.O.(4D)No.1, School Education Department, dated 21 .1.2000.

3.2. It is further contended on behalf of the petitioner that based on the request of the fifth respondent school, the Professional and Executive Employment Office, Chennai-4, sponsored names of 20 eligible candidates, including the name of the petitioner herein, for filling up the post of Physical Director Grade-I in the fifth respondent school in their proceedings dated 21.5.2001, and pursuant to which, the petitioner was selected and appointed by the school committee of the fifth respondent on 27.6.2001.

3.3. Mr.K.Chandru, learned Senior Counsel appearing for the petitioner, invited my attention to the repeated representations of the fifth respondent school to the second respondent, to permit the fifth respondent School to utilise the upgraded post, as V.Sokkalal had already retired and that the second respondent accorded permission for the same only on 6.12.2001, which was communicated to the fifth respondent by proceedings of the third respondent dated 25.2.2002.

3.4. According to Mr.K.Chandru, learned Senior Counsel appearing for the petitioner, the reason that weighed the second respondent for resuming the post of Physical Director Grade-I sanctioned to the fifth respondent school, viz., the said post was not utilised by the fifth respondent school, is not tenable in law, as the same was contrary to the material facts available on record and therefore, seeks to quash the proceedings of the second respondent dated 20.4.2002 and to direct the fourth respondent to approve the appointment of the petitioner with effect from 27.6.2001.

4.1. Even though Mr.V.R.Rajasekaran, learned Special Government Pleader appearing for respondents 1 to 4, points out that the proceedings of the second respondent dated 21.3.2000, communicating the said Government Order dated 21.1.2000, upgrading the post of Physical Director Grade-II to Physical Director Grade-I in the fifth respondent school refers to the name of the incumbent, who was holding the post of Physical Director Grade-II, viz., V.Sokkalal, he is not disputing the fact that the said V.Sokkalal had to retire on 30.9.1999 and was permitted to serve till the end of the academic year viz., 31.5.2000, on reemployment.

4.2. The learned Special Government Pleader is also not disputing the fact that the upgradation from the post of Physical Director Grade-II to Physical Director Grade-I was made not with reference to the incumbent, who held the post of Physical Director Grade-II, but with reference to the student staff strength as per G.O.No.525, School Education Department, dated 29.12.1997.

4.3. The learned Special Government Pleader is also not disputing the fact that Professional and Executive Employment Officer, Chennai-4, in their proceedings dated 21.5.2001, sponsored names of 20 eligible candidates, including the name of the petitioner for filling up the post of Physical Director Grade-I in the fifth respondent school, presumably on the request of the fifth respondent, based on the upgradation accorded by the first respondent in the said Government Order dated 21.1.2000.

4.4. Mr.V.R.Rajasekaran, learned Special Government Pleader, could not dispute the fact that by representations dated 3.8.2001 and 28.12.2001 addressed to the second respondent, the fifth respondent school sought permission for utilising the upgraded post, viz., Physical Director Grade-I, sanctioned in the said Government Order dated 21.1.200 0.

4.5. He is also not disputing the fact that the second respondent by proceedings dated 6.12.2001, which was communicated by the proceedings of the third respondent dated 25.2.2002, permitted the fifth respondent to fill up the post of Physical Director Grade-I from the academic year 2001-2002.

5. Mr.A.Abdul Rahman, learned counsel appearing for the sixth respondent, contends that on the date of the proceedings of the second respondent dated 6.12.2001, which was communicated by the proceedings of the third respondent dated 25.2.2002, the sixth respondent had become eligible for consideration to the post of Physical Director Grade-I, as he was holding the post of Physical Director Grade-II in the fifth respondent school, and therefore, he alone is entitled to be promoted to the post of Physical Director Grade-I in the fifth respondent school as an internal candidate as per Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules.

6. I have given careful consideration to the submissions of both sides.

7. From the facts and circumstances of the case, the followings facts are not in dispute:
(i) The first respondent-Government upgraded the post of Physical Director Grade-II to Physical Director Grade-I in the fifth respondent school by G.O.(4D) No.1, School Education Department, dated 21.1.2000 and the same was communicated by the proceedings of the second respondent dated 21.3.2001, referring the name of said incumbent viz., V. Sokkalal, who was holding the post of Physical Director Grade-II at the relevant point of time i.e. on 21.1.2000.

(ii) The said V.Sokkalal had to retire on 30.9.1999, but was permitted to continue in the post of Physical Director Grade-II till the end of the academic year 31.5.2000 on reemployment.

(iii) At the request of the fifth respondent school, the Professional and Executive Employment Office, Chennai-4, in their proceedings dated 21.5.2001, sponsored names of 20 eligible candidates, including the name of the petitioner, for filling up the post of Physical Director Grade-I in the fifth respondent school and thereafter, the petitioner was selected and appointed in the fifth respondent school on 27.6.2001.

(iv) The fifth respondent school in their representations dated 3.8.2001 and 28.12.2001 sought permission of respondents 3 and 2 to utilise the upgradation of the post of Physical Director Grade-I, which was sanctioned by G.O.(4D), School Education Department dated 21.1.200 0, as communicated by the proceedings of the second respondent dated 21.3.2000, to the appointment

of the petitioner.

(v) The third respondent by proceedings dated 25.5.2002, communicated the proceedings of the second respondent dated 6.12.2001, permitting the fifth respondent school to utilise the upgraded post of Physical Director Grade-I in the fifth respondent school from the academic year 2001-2002.

(vi) Even though the upgradation of the post of Physical Director Grade-II to Physical Director Grade-I in the fifth respondent school was accorded by said Government Order dated 21.1.2000, as communicated by the proceedings of the second respondent dated 21.3.2000, referring the name of the said incumbent, who was then holding the post of Physical Director Grade-II, it is purely made in terms of the conditions of G.O.No.525, School Education Department dated 29.12.1997, taking note of the student-staff strength in the fifth respondent school, but not with reference to the incumbent, who was then holding the post of Physical Director Grade-II in the fifth respondent school.

8. In the light of the above undisputed facts and circumstances of the case, where there was a delay on the part respondents 2 and 3 in clarifying the right of the fifth respondent school to utilise the upgraded post, viz., Physical Director Grade-I, in communicating the proceedings of the second respondent dated 6.12.2001, the resumption of the post of Physical Director Grade-I in the fifth respondent school by proceedings of the second respondent dated 20.4.2002, holding that they failed to utilise the same, over looking the relevant fact that the petitioner was sponsored, selected and appointed as Physical Director Grade-I through the Employment Exchange as early as on 27.6.2 001, in my considered opinion, is arbitrary, unreasonable and contrary to the material facts available on record and therefore, the consequential refusal of the fourth respondent by proceedings dated 30.5.20 02, to approve the appointment of the petitioner as Physical Director Grade-I in the fifth respondent school with effect from 27.6.2001 is also illegal, as the same is arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

9. In my considered opinion, when the Government by G.O.(4D) No.1, School Education Department, dated 21.1.2000, accorded upgradation of the post of Physical Director Grade II to Physical Director Grade I, after having satisfied the need for the same, based on student staff strength with reference to G.O.No.525, School Education Department, dated 29.12.1997, the retirement of the incumbent, who was holding the lower post on the date of upgradation, is immaterial either for filling up the upgraded post, viz., Physical Director Grade-I or for approval of the appointment of the new incumbent to the upgraded post, viz., Physical Director Grade-I.

10. In any event, the sixth respondent, who was, concededly, not qualified for the post of Physical Director Grade-I as on 21.5.2001 when the said Professional and Executive Employment Office, Chennai-4, sponsored 20 candidates to the fifth respondent school to fill up the post of Physical Director Grade-I, is not entitled to claim that he alone should be considered for the said post, merely by referring to the belated proceedings of the second respondent dated 6.12.2001 and of the third respondent dated 25.2.2002.

That apart, the sixth respondent, without challenging the very resumption of the post of Physical Director Grade-I in the fifth respondent school, has no locus standi to oppose the claim of the petitioner.

11. For the aforesaid reasons, I am inclined to allow the writ petition and quash the impugned proceedings of the second respondent dated 20.4.2002 and the consequential proceedings of the fourth respondent dated 30.5.2002, with a direction to respondents 1 to 4 to sanction the post of Physical Director Grade-I to the fifth respondent school and to approve the appointment of the petitioner from the date of appointment viz., 27.6.2001, and settle his arrears of salary within a period of sixty days from the date of receipt of copy of this order. No costs. Consequently, WPMP.No.59757 of 2002 is closed.

Index : Yes
Internet: Yes

ATR

To,

1. The Secretary,
Department of School
Education,
State of Tamil Nadu,
Fort St. George,
Chennai-9.

2. The Director of School Education,
DPI Compound, College Road,
Nungambakkam, Chennai-6.

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